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5 Attorneys for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

10 NORTHERN CALIFORNIA RIVER
WATCH, a non-profit corporation,

11 Plaintiff,

12 v.

13 BAY AREA DIABLO PETROLEUM
COMPANY dba GOLDEN GATE
14 PETROLEUM COMPANY and DOES
1-10, Inclusive,

15 Defendants

CASE NO. C08-01613 BZ

PLAINTIFF'S SEPARATE CASE
MANAGEMENT STATEMENT

Date: July 7, 2008
Time: 4:00 p.m.
Ctm: G, 15th Floor
Judge: Hon. Bernard Zimmerman

16 _____ /
17
18 Pursuant to Rule 16 of the Federal Rules of Civil Procedure, U.S. District Court, Northern
19 District, Local Rules 16-9 and 16-10, and this Court's Standing Order effective March 1, 2007, Plaintiff
20 NORTHERN CALIFORNIA RIVER WATCH submits this separate Case Management Statement and
21 requests that the Court adopt it as its Case Management Order.

22 **I. JURISDICTION AND SERVICE**

23 Plaintiff alleges that this Court has subject matter jurisdiction over all federal causes of action
24 cited in its Complaint pursuant to the Resource Conservation and Recovery Act ("RCRA") Section
25 7002(a) and 7002(b), 42 U.S.C. § 6972 (a) and § 6972(b) and 28 U.S.C. § 1221. Inasmuch as the events
26 enumerated in the Complaint have taken place in the Northern District of California, Plaintiff alleges
27 that venue is properly placed in this Court.
28

1 Defendant BAY AREA DIABLO PETROLEUM COMPANY dba GOLDEN GATE
2 PETROLEUM COMPANY has been served with the Complaint, but has not made an appearance in this
3 action to date, and to Plaintiff's knowledge is currently unrepresented. (See Plaintiff's Declaration of
4 Hardship filed simultaneously).

5 II. FACTS

6 1. ALLEGATIONS OF THE COMPLAINT

7 Plaintiff alleges Defendant has violated various provisions of the RCRA and regulations adopted
8 pursuant to the RCRA, as well as a number of California statutes which supplement the environmental
9 protections implemented by the provisions of the RCRA. Plaintiff claims these violations have occurred
10 at Defendant's former underground storage tank ("UST") site located at 3575 Pacheco Boulevard in
11 Martinez, California, as well as at the Brentwood Cardlock UST site, located at 8285 Brentwood
12 Boulevard, Brentwood, California (hereafter "the Facilities").

13 Plaintiff served Defendant with a Notice of Violations and Intent to File Suit under the Resource
14 Conservation and Recovery Act on or about November 1, 2007, and filed the initial Complaint in this
15 action on March 25, 2008. Plaintiff alleges that petroleum contamination was detected beneath the
16 Facilities in approximately 1992 and again in 2004 (Martinez site), and in 1996 (Brentwood site) as the
17 result of leaks in the USTs, piping systems, and/or surface spills. Plaintiff alleges such contamination
18 violates regulations that have become effective pursuant to the RCRA, and that such contamination
19 includes known carcinogens and/or reproductive toxins, either of which pose a risk of imminent and
20 substantial endangerment to human health and/or to the environment. Plaintiff acknowledges that some
21 remediation work may have occurred at the Facilities under the direction of local and state regulatory
22 agencies, but it is unsatisfied with the nature and extent of the investigation and/or remediation.

23 Plaintiff requests a declaration that Defendant whether through its operations, leasing
24 arrangements, or ownership of the Facilities or the real estate on which the Facilities are situated, has
25 violated the RCRA, and seeks civil penalties, fees and costs, and various injunctive relief or orders
26 requiring Defendant to conduct further investigations, remediate the Facilities without further delays,
27 and refrain from any additional discharges of petroleum products and constituents at the Facilities.

1 **III. FACTUAL AND LEGAL ISSUES IN DISPUTE**

2 a. Plaintiff claims Defendant's actions and practices at the Facilities constitute ongoing
3 violations of the RCRA.

4 b. Plaintiff alleges the Facilities present an imminent and substantial harm to public health
5 and/or the environment.

6 c. Plaintiff claims Defendant has been entirely unsuccessful in abating contamination at the
7 Facilities.

8 d. Plaintiff claims its members have been, are being, or will be injured by Defendant's
9 violations of the RCRA as alleged in Plaintiff's Complaint. .

10 **IV. MOTIONS**

11 There are no motions are pending. Plaintiff anticipates filing a Motion for Summary Judgment,
12 and filing of a Motion for Default Judgment in the event Defendant does not appear at the Case
13 Management Conference.

14 **V. AMENDMENT OF PLEADINGS**

15 Plaintiff does not anticipate adding any parties or claims in this action at this time.

16 **VI. DISCLOSURES**

17 Defendant has not yet appeared and no Initial Disclosures pursuant to FRCP Rule 26(a) have
18 been exchanged.

19 **VII. DISCOVERY**

20 Plaintiff proposes to the Court that all pretrial discovery and other pretrial proceedings, including
21 initial disclosures and pretrial motions of any sort, be stayed, pending appearance by Defendant and/or
22 Plaintiff's Request for Default and Motion for Default Judgment.

23 Plaintiff proposes the following discovery plan:

24 Each side will submit no more than fifty (50) interrogatories. The last day to exchange expert
25 disclosure and expert witness reports shall be May 11, 2009, and the last day to exchange expert rebuttal
26 witness reports shall be July 6, 2009. Expert witness discovery shall be completed by September 7,
27 2009.

1 **VIII. RELATED CASES**

2 There are no related cases or proceedings pending before another judge of this Court, or before
3 another court or administrative body.

4 **IX. RELIEF SOUGHT**

5 1. **DECLARATORY AND INJUNCTIVE RELIEF**

6 Plaintiff requests this Court enjoin Defendant from violating the RCRA and/or the regulations
7 pursuant to this statutory scheme. Plaintiff further requests injunctive relief requiring that Defendant:

- 8 a. be enjoined from further discharging at the Facilities;
9 b. investigate and determine the extent of the alleged pollution and contamination at the
10 Facilities and the means to remediate the alleged contamination; and,
11 c. fully remediate the ongoing contamination at the Facilities using the best available
12 technology once adequately characterized and delineated.

13 2. **CIVIL PENALTIES**

14 Plaintiff requests the Court assess civil penalties against Defendant pursuant to the penalty
15 provisions as contained in the RCRA. .

16 3. **ATTORNEYS' FEES AND COSTS**

17 Plaintiff requests the Court award costs, including reasonable attorney, expert, witness, and
18 consultant fees, as authorized by the RCRA.

19 **X. SETTLEMENT AND ADR**

20 Plaintiff has filed its ADR Certification. The parties have not as yet discussed the resolution of
21 this matter, ADR options and plans.

22 **XI. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

23 Plaintiff agrees to a magistrate judge for all purposes except trial.

24 **XII. OTHER REFERENCES**

25 This matter is not suitable for reference to binding arbitration, a special master or the Judicial
26 Panel on Multidistrict Litigation.

XIII. EXPEDITED SCHEDULE

_____ This is not the type of case which can be handled on an expedited basis with streamlined procedures.

XIV. SCHEDULING

LITIGATION DEADLINES (PROPOSED)

- | | |
|--------------------------------------------------------------|-------------------------------|
| a. Deadline for joining parties and amending pleadings: | August 1, 2008 |
| b. Conclusion of pretrial discovery: | September 7, 2009 |
| c. Last day to file summary judgment or dispositive motions: | October 12, 2009 |
| d. Pretrial conference: | November 16, 2009 |
| e. Trial: | December 14, 2009 |
| f. Anticipated length of trial: | 3 court days (if bench trial) |

XV. TRIAL

Plaintiff anticipates this case will be tried by the Court, with an expected length of 3 days.

XVI. DISCLOSURE OF NON-PARTY INTERESTED PERSONS

Plaintiff filed its Certificate of Interested Parties under L.R. 3-16 on November 28, 2007.

/s/ Jack Silver

DATED: June 30, 2008

JACK SILVER
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

1 Jack Silver, Esq. SBN #160575
Law Office of Jack Silver
2 Post Office Box 5469
Santa Rosa, CA 95402-5469
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5 Attorneys for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH
6
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 NORTHERN CALIFORNIA RIVER
WATCH, a non-profit corporation,

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14 BAY AREA DIABLO PETROLEUM
COMPANY dba GOLDEN GATE
15 PETROLEUM COMPANY and DOES
1-10, Inclusive,

16 Defendants
17 _____/

CASE NO. C08-01613 BZ

**DECLARATION OF JACK SILVER
RE HARDSHIP**

Date: July 7, 2008
Time: 4:00 p.m.
Cttrm: G, 15th Floor
Judge: Hon. Bernard Zimmerman

18 I, Jack Silver, declare as follows:

19 1. I am the attorney for plaintiff Northern California River Watch in the above-captioned
20 proceedings, and I have personal knowledge of each matter stated herein.

21 2. The Complaint was filed in this matter on March 25, 2008. I provided copies of the Summons,
22 Complaint and all associated documents by mail to Dennis O'Keefe, Defendant's Registered Agent as
23 listed with the California Secretary of State, on March 27, 2008, together with a Waiver of Service of
24 Summons (Exhibit A), pursuant to FRCP Rule 4. I received no response whatsoever; no executed
25 Waiver of Service was received, and no Answer to the Complaint was filed. Therefore, on June 3, 2008
26 I requested that Defendant be personally served via certified process server. Proof of Service was
27 effectuated on June 11, 2008 and filed with this Court on June 12, 2008 (Court Doc 6).
28

1 3. As of June 20, 2008, there was no communication from Defendant or any attorney representing
2 Defendant, and no Answer to the Complaint had been filed.

3 4. On June 23, 2008 I prepared a draft Joint Case Management Statement in preparation for the
4 Case Management Conference scheduled for July 7, 2008. I mailed the same to Dennis O'Keefe,
5 Defendant's President and Registered Agent on that date together with a cover letter requesting that he
6 communicate with me with regard to completing the Joint Case Management Statement, or refer the
7 matter to counsel.(Exhibit B)

8 5. As of this date, June 30, 2008, I have had absolutely no response from Defendant nor has any
9 attorney on Defendant's behalf been in contact with me. Therefore, I have filed simultaneously with
10 this Declaration, Plaintiff's Separate Case Management Statement.

11
12 I declare under penalty of perjury under the laws of the State of California that the foregoing is
13 true and correct and that this Declaration is executed on the 30th day of June, at Santa Rosa, California.

14 /s/ Jack Silver

15
16 JACK SILVER

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



March 27, 2008

Dennis O'Keefe,
Registered Agent for Service
Bay Area Diablo Petroleum Co.
501 Shell Avenue
Martinez, California 94553

Re: Northern California River Watch v. Bay Area Diablo Petroleum dba Golden Gate
Petroleum Company, et al
U.S.D.C. Case No. C08-01613 BZ

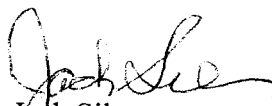
Dear Mr. O'Keefe:

Please be advised this office represents Northern California River Watch, plaintiff in the above-captioned action. Pursuant to Rule 4 of the Federal Rules of Court, I am forwarding to you as Registered Agent for Defendant Bay Area Diablo Petroleum, the enclosed documents:

Notice of Lawsuit and Request for Waiver of Service of Summons
Waiver of Service of Summons (original and copy)
Summons and Complaint (copies)
Order Setting Initial Case Management Conference and ADR Deadlines
Standing Orders of Magistrate Judge Bernard Zimmerman
Standing Order for all Judges of Northern District of California
Notice of Assignment of Case to a U.S. Magistrate Judge for Trial
Consent to Proceed Before a U.S. Magistrate Judge (Blank form)
Declination to Proceed Before a Magistrate Judge (Blank form)
ECF Registration Information Handout

Please date, sign and return the Waiver of Service of Summons to my office in the self-addressed, stamped envelope which is provided for your use. Kindly also refer this matter to counsel.

Sincerely,


Jack Silver

JS:lhm
Enclosures

AO 398 (12/93)

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (A) Dennis O'Keefe
 as (B) Registered Agent for Service of (C) Bay Area Diablo Petroleum Company

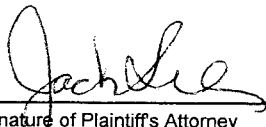
A lawsuit has been commenced against you (or the entity on whose behalf you are addressed.)
 A copy of the complaint is attached to this notice. It has been filed in the United States District Court
 for the (D) Northern District of California
 and has been assigned docket number (E) C08-01613 BZ.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States.)

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 27th day of March, 2008.



 Signature of Plaintiff's Attorney
 OR Unrepresented Plaintiff

A - Name of Individual defendant (or name of officer or agent of corporate defendant)
 B - Title, or other relationship of Individual to corporate defendant
 C - Name of corporate defendant, if any
 D - District
 E - Docket number of action
 F - Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

Clear Form

WAIVER OF SERVICE OF SUMMONS

(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, Bay Area Diablo Petroleum Company ☒, acknowledge receipt of your request
 (DEFENDANT NAME)

that I waive service of summons in the action of No. Calif. River Watch v Bay Area Diablo Petroleum Co. ☒,
 (CAPTION OF ACTION)

which is case number C08-01613 BZ in the United States District Court
 (DOCKET NUMBER)

for the Northern District of California.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an

answer or motion under Rule 12 is not served upon you within 60 days after

March 27, 2008,
 (DATE REQUEST WAS SENT)

or within 90 days after that date if the request was sent outside the United States.

(DATE)

(SIGNATURE)

Printed/Typed Name: _____

As _____ of Bay Area Diablo Petrol. Co.
 (TITLE) (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

EXHIBIT B

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



Via Facsimile & U.S. Mail
925-957-9589

June 23, 2008

Dennis O'Keefe, President
Bay Area Diablo Petroleum Company
501 Shell Avenue
Martinez, California 94553

Re: Northern California River Watch v. Bay Area Diablo Petroleum Company dba Golden
Gate Petroleum Company, et al
U.S.D.C. Case No. C08-01613 BZ

Dear Mr. O'Keefe:


As you may be aware from the letter and pleadings provided to you on March 27, 2008, as Registered Agent for Bay Area Diablo Petroleum Company, as well as the pleadings served upon Bay Area Diablo Petroleum Company on June 11, 2008, the Court has issued a deadline of June 30, 2008 by which time a Joint Case Management Statement must be filed in the above-captioned proceedings.

I have attached the outline of a Joint Case Management Statement for your review and comment, and would request that you provide the same to your attorney, if you have retained one, without delay. If you wish to proceed in this matter without counsel, please advise me as to your edits and additions to the enclosed document, so that I can prepare a final document for signature by all parties.

You are welcome to communicate with me by e-mail if you wish. I am happy to provide a version of the Joint Case Management Statement via e-mail which would be suitable for editing.

I would appreciate your prompt response.

Sincerely,


Jack Silver

JS:lhm
Enclosure

TRANSMISSION VERIFICATION REPORT

TIME : 06/23/2008 10:40
NAME : LAW OFFICE
FAX : 7075288675
TEL : 7075288175
SER.# : 000E5J209471

DATE, TIME	06/23 10:38
FAX NO./NAME	19259579589
DURATION	00:02:13
PAGE(S)	08
RESULT	OK
MODE	STANDARD
	ECM

FAX TRANSMISSION

Law Offices of Jack Silver
Post Office Box 5469
Santa Rosa, CA 95402-5469
Tel. (707) 528-8175
Fax. (707) 528-8675

To: **Dennis O'Keefe, President** **Date:** **June 23, 2008**
Bay Area Diablo Petroleum

Fax #: **(925) 957-9589** **Pages:** **8, including this cover sheet.**

From: **Law Offices of Jack Silver**

Subject: **Northern Calif. River Watch v. Bay Area Diablo Petroleum Company dba Golden Gate Petroleum Company, et al**
Case No. C08-01613 BZ

ORIGINAL TO FOLLOW VIA U.S. MAIL

Message:

PLEASE SEE ATTACHED.